

## SENATE BILL NO. 282

INTRODUCED BY J. LASLOVICH

A BILL FOR AN ACT ENTITLED: "AN ACT INCREASING THE THRESHOLD AT WHICH CERTAIN RETIREMENT INCOME IS EXCLUDABLE FROM GROSS INCOME FOR MONTANA STATE INCOME TAX PURPOSES; AMENDING SECTIONS 15-30-111, 19-2-1004, 19-17-407, 19-18-612, 19-19-504, 19-20-706, AND 19-21-212, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 15-30-111, MCA, is amended to read:

**"15-30-111. Adjusted gross income.** (1) Adjusted gross income is the taxpayer's federal adjusted gross income as defined in section 62 of the Internal Revenue Code, 26 U.S.C. 62, and in addition includes the following:

(a) (i) interest received on obligations of another state or territory or county, municipality, district, or other political subdivision of another state, except to the extent that the interest is exempt from taxation by Montana under federal law;

(ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code, 26 U.S.C. 852(b)(5), that are attributable to the interest referred to in subsection (1)(a)(i);

(b) refunds received of federal income tax, to the extent that the deduction of the tax resulted in a reduction of Montana income tax liability;

(c) that portion of a shareholder's income under subchapter S. of Chapter 1 of the Internal Revenue Code that has been reduced by any federal taxes paid by the subchapter S. corporation on the income;

(d) depreciation or amortization taken on a title plant as defined in 33-25-105;

(e) the recovery during the tax year of an amount deducted in any prior tax year to the extent that the amount recovered reduced the taxpayer's Montana income tax in the year deducted;

(f) if the state taxable distribution of an estate or trust is greater than the federal taxable distribution of the same estate or trust, the difference between the state taxable distribution and the federal taxable distribution of the same estate or trust for the same tax period; and

(g) except for exempt-interest dividends described in subsection (2)(a)(ii), for tax years commencing after December 31, 2002, the amount of any dividend to the extent that the dividend is not included in federal adjusted gross income.

(2) Notwithstanding the provisions of the Internal Revenue Code, adjusted gross income does not include the following, which are exempt from taxation under this chapter:

(a) (i) all interest income from obligations of the United States government, the state of Montana, or a county, municipality, district, or other political subdivision of the state and any other interest income that is exempt from taxation by Montana under federal law;

(ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code, 26 U.S.C. 852(b)(5), that are attributable to the interest referred to in subsection (2)(a)(i);

(b) interest income earned by a taxpayer who is 65 years of age or older in a tax year up to and including \$800 for a taxpayer filing a separate return and \$1,600 for each joint return;

(c) (i) except as provided in subsection (2)(c)(ii), the first ~~\$3,600~~ \$5,000 of all pension and annuity income received as defined in 15-30-101;

(ii) for pension and annuity income described under subsection (2)(c)(i), as follows:

(A) each taxpayer filing singly, head of household, or married filing separately shall reduce the total amount of the exclusion provided in subsection (2)(c)(i) by \$2 for every \$1 of federal adjusted gross income in excess of \$30,000 as shown on the taxpayer's return;

(B) in the case of married taxpayers filing jointly, if both taxpayers are receiving pension or annuity income or if only one taxpayer is receiving pension or annuity income, the exclusion claimed as provided in subsection (2)(c)(i) must be reduced by \$2 for every \$1 of federal adjusted gross income in excess of \$30,000 as shown on their joint return;

(d) all Montana income tax refunds or tax refund credits;

(e) gain required to be recognized by a liquidating corporation under 15-31-113(1)(a)(ii);

(f) all tips or gratuities that are covered by section 3402(k) or service charges that are covered by section 3401 of the Internal Revenue Code of 1954, 26 U.S.C. 3402(k) or 3401, as amended and applicable on January 1, 1983, received by a person for services rendered to patrons of premises licensed to provide food, beverage, or lodging;

(g) all benefits received under the workers' compensation laws;

(h) all health insurance premiums paid by an employer for an employee if attributed as income to the

1 employee under federal law;

2 (i) all money received because of a settlement agreement or judgment in a lawsuit brought against a  
3 manufacturer or distributor of "agent orange" for damages resulting from exposure to "agent orange";

4 (j) principal and income in a medical care savings account established in accordance with 15-61-201  
5 or withdrawn from an account for eligible medical expenses, as defined in 15-61-102, of the taxpayer or a  
6 dependent of the taxpayer or for the long-term care of the taxpayer or a dependent of the taxpayer;

7 (k) principal and income in a first-time home buyer savings account established in accordance with  
8 15-63-201 or withdrawn from an account for eligible costs, as provided in 15-63-202(7), for the first-time purchase  
9 of a single-family residence;

10 (l) contributions withdrawn from a family education savings account or earnings withdrawn from a family  
11 education savings account for qualified higher education expenses, as defined in 15-62-103, of a designated  
12 beneficiary;

13 (m) the recovery during the tax year of any amount deducted in any prior tax year to the extent that the  
14 recovered amount did not reduce the taxpayer's Montana income tax in the year deducted;

15 (n) if the federal taxable distribution of an estate or trust is greater than the state taxable distribution of  
16 the same estate or trust, the difference between the federal taxable distribution and the state taxable distribution  
17 of the same estate or trust for the same tax period;

18 (o) deposits, not exceeding the amount set forth in 15-30-603, deposited in a Montana farm and ranch  
19 risk management account, as provided in 15-30-601 through 15-30-605, in any tax year for which a deduction  
20 is not provided for federal income tax purposes;

21 (p) income of a dependent child that is included in the taxpayer's federal adjusted gross income pursuant  
22 to the Internal Revenue Code. The child is required to file a Montana personal income tax return if the child and  
23 taxpayer meet the filing requirements in 15-30-142.

24 (q) principal and income deposited in a health care expense trust account, as defined in 2-18-1303, or  
25 withdrawn from the account for payment of qualified health care expenses as defined in 2-18-1303; and

26 (r) that part of the refundable credit provided in 33-22-2006 that reduces Montana tax below zero.

27 (3) A shareholder of a DISC that is exempt from the corporation license tax under 15-31-102(1)(l) shall  
28 include in the shareholder's adjusted gross income the earnings and profits of the DISC in the same manner as  
29 provided by section 995 of the Internal Revenue Code, 26 U.S.C. 995, for all periods for which the DISC election  
30 is effective.

(4) A taxpayer who, in determining federal adjusted gross income, has reduced the taxpayer's business deductions by an amount for wages and salaries for which a federal tax credit was elected under sections 38 and 51(a) of the Internal Revenue Code, 26 U.S.C. 38 and 51(a), is allowed to deduct the amount of the wages and salaries paid regardless of the credit taken. The deduction must be made in the year that the wages and salaries were used to compute the credit. In the case of a partnership or small business corporation, the deduction must be made to determine the amount of income or loss of the partnership or small business corporation.

(5) Married taxpayers filing a joint federal return who are required to include part of their social security benefits or part of their tier 1 railroad retirement benefits in federal adjusted gross income may split the federal base used in calculation of federal taxable social security benefits or federal taxable tier 1 railroad retirement benefits when they file separate Montana income tax returns. The federal base must be split equally on the Montana return.

(6) Married taxpayers filing a joint federal return who are allowed a capital loss deduction under section 1211 of the Internal Revenue Code, 26 U.S.C. 1211, and who file separate Montana income tax returns may claim the same amount of the capital loss deduction that is allowed on the federal return. If the allowable capital loss is clearly attributable to one spouse, the loss must be shown on that spouse's return; otherwise, the loss must be split equally on each return.

(7) In the case of passive and rental income losses, married taxpayers filing a joint federal return and who file separate Montana income tax returns are not required to recompute allowable passive losses according to the federal passive activity rules for married taxpayers filing separately under section 469 of the Internal Revenue Code, 26 U.S.C. 469. If the allowable passive loss is clearly attributable to one spouse, the loss must be shown on that spouse's return; otherwise, the loss must be split equally on each return.

(8) Married taxpayers filing a joint federal return in which one or both of the taxpayers are allowed a deduction for an individual retirement contribution under section 219 of the Internal Revenue Code, 26 U.S.C. 219, and who file separate Montana income tax returns may claim the same amount of the deduction that is allowed on the federal return. The deduction must be attributed to the spouse who made the contribution.

(9) (a) Married taxpayers filing a joint federal return who are allowed a deduction for interest paid for a qualified education loan under section 221 of the Internal Revenue Code, 26 U.S.C. 221, and who file separate Montana income tax returns may claim the same amount of the deduction that is allowed on the federal return. The deduction may be split equally on each return or in proportion to each taxpayer's share of federal adjusted gross income.

(b) Married taxpayers filing a joint federal return who are allowed a deduction for qualified tuition and related expenses under section 222 of the Internal Revenue Code, 26 U.S.C. 222, and who file separate Montana income tax returns may claim the same amount of the deduction that is allowed on the federal return. The deduction may be split equally on each return or in proportion to each taxpayer's share of federal adjusted gross income.

(10) A taxpayer receiving retirement disability benefits who has not attained 65 years of age by the end of the tax year and who has retired as permanently and totally disabled may exclude from adjusted gross income up to \$100 a week received as wages or payments in lieu of wages for a period during which the employee is absent from work due to the disability. If the adjusted gross income before this exclusion exceeds \$15,000, the excess reduces the exclusion by an equal amount. This limitation affects the amount of exclusion, but not the taxpayer's eligibility for the exclusion. If eligible, married individuals shall apply the exclusion separately, but the limitation for income exceeding \$15,000 is determined with respect to the spouses on their combined adjusted gross income. For the purpose of this subsection, "permanently and totally disabled" means unable to engage in any substantial gainful activity by reason of any medically determined physical or mental impairment lasting or expected to last at least 12 months.

(11) An individual who contributes to one or more accounts established under the Montana family education savings program may reduce adjusted gross income by the lesser of \$3,000 or the amount of the contribution. In the case of married taxpayers, each spouse is entitled to a reduction, not in excess of \$3,000, for the spouses' contributions to the accounts. Spouses may jointly elect to treat half of the total contributions made by the spouses as being made by each spouse. The reduction in adjusted gross income under this subsection applies only with respect to contributions to an account of which the account owner, as defined in 15-62-103, is the taxpayer, the taxpayer's spouse, or the taxpayer's child or stepchild if the taxpayer's child or stepchild is a Montana resident. The provisions of subsection (1)(e) do not apply with respect to withdrawals of contributions that reduced adjusted gross income.

(12) (a) A taxpayer may exclude the amount of the loan payment received pursuant to subsection (12)(a)(iv), not to exceed \$5,000, from the taxpayer's adjusted gross income if the taxpayer:

(i) is a health care professional licensed in Montana as provided in Title 37;

(ii) is serving a significant portion of a designated geographic area, special population, or facility population in a federally designated health professional shortage area, a medically underserved area or population, or a federal nursing shortage county as determined by the secretary of health and human services

1 or by the governor;

2 (iii) has had a student loan incurred as a result of health-related education; and

3 (iv) has received a loan payment during the tax year made on the taxpayer's behalf by a loan repayment  
4 program described in subsection (12)(b) as an incentive to practice in Montana.

5 (b) For the purposes of subsection (12)(a), a loan repayment program includes a federal, state, or  
6 qualified private program. A qualified private loan repayment program includes a licensed health care facility, as  
7 defined in 50-5-101, that makes student loan payments on behalf of the person who is employed by the facility  
8 as a licensed health care professional. (Subsection (2)(f) terminates on occurrence of contingency--sec. 3, Ch.  
9 634, L. 1983; subsection (2)(o) terminates on occurrence of contingency--sec. 9, Ch. 262, L. 2001.)"

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11 **Section 2.** Section 19-2-1004, MCA, is amended to read:

12 **"19-2-1004. Exemption from taxes and legal process.** Except as provided in 19-2-907 and 19-2-909,  
13 the right of a person to any benefit or payment from a retirement system or plan and the money in the ~~system~~  
14 system's or plan's pension trust fund is not:

15 (1) subject to execution, garnishment, attachment, or any other process;

16 (2) subject to state, county, or municipal taxes except for:

17 (a) a benefit or annuity received in excess of ~~\$3,600~~ \$5,000 or adjusted by an amount determined  
18 pursuant to 15-30-111(2)(c)(ii); or

19 (b) a refund of a member's regular contributions picked up by an employer after June 30, 1985, as  
20 provided in 19-3-315, 19-5-402, 19-6-402, 19-7-403, 19-8-502, 19-9-710, or 19-13-601; or

21 (3) assignable except as specifically provided in this chapter."  
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23 **Section 3.** Section 19-17-407, MCA, is amended to read:

24 **"19-17-407. Exemption from taxation and legal process.** (1) The first ~~\$3,600~~ \$5,000 or the amount  
25 determined pursuant to 15-30-111(2)(c)(ii) of benefits received under this part is exempt from state, county, and  
26 municipal taxation.

27 (2) Benefits received under this part are not subject to execution, garnishment, attachment, or any other  
28 process."  
29

30 **Section 4.** Section 19-18-612, MCA, is amended to read:

1           **"19-18-612. Protection of benefits from legal process and taxation -- nonassignability.** (1) Except

2 for execution or withholding for the payment of child support or for the payment of spousal support for a spouse  
3 or former spouse who is the custodial parent of the child, payments made or to be made under this chapter are  
4 not subject to judgments, garnishment, execution, or other legal process. A person entitled to a pension may not  
5 assign the right, and the association and trustees may not recognize any assignment or pay over any sum  
6 assigned.

7           (2) The first ~~\$3,600~~ \$5,000 or the amount determined pursuant to 15-30-111(2)(c)(ii) of benefits received  
8 under this part is exempt from state, county, and municipal taxation."

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10           **Section 5.** Section 19-19-504, MCA, is amended to read:

11           **"19-19-504. Protection of benefits from legal process and taxation.** (1) Except for execution or

12 withholding for the payment of child support or for the payment of spousal support for a spouse or former spouse  
13 who is the custodial parent of the child, the benefits provided for in this part are not subject to execution,  
14 garnishment, attachment, or the operation of bankruptcy, insolvency, or other process of law and are  
15 unassignable except as specifically provided in 19-19-505.

16           (2) The first ~~\$3,600~~ \$5,000 or the amount determined pursuant to 15-30-111(2)(c)(ii) of benefits received  
17 under this part is exempt from state, county, and municipal taxation."

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19           **Section 6.** Section 19-20-706, MCA, is amended to read:

20           **"19-20-706. Exemption from taxation and legal process.** Except as provided in 19-20-305 and  
21 19-20-306, the retirement allowances or any other benefits accrued or accruing to any person under the  
22 provisions of the retirement system and the accumulated contributions and cash and securities in the various  
23 funds of the retirement system are:

24           (1) exempted from any state, county, or municipal tax of the state of Montana except for:

25           (a) a retirement allowance received in excess of ~~\$3,600~~ \$5,000 or adjusted by an amount determined  
26 pursuant to 15-30-111(2)(c)(ii); or

27           (b) a withdrawal paid under 19-20-603 of a member's contributions picked up by an employer after June  
28 30, 1985, as provided in 19-20-602;

29           (2) not subject to execution, garnishment, attachment by trustee process or otherwise, in law or equity,  
30 or any other process; and

(3) unassignable except as specifically provided in this chapter."

**Section 7.** Section 19-21-212, MCA, is amended to read:

**"19-21-212. Exemption from taxation, legal process, and assessments.** Except for execution or withholding for the payment of child support or for the payment of spousal support for a spouse or former spouse who is the custodial parent of the child, contracts, benefits, and contributions under the optional retirement program and the earnings on the contributions are:

(1) except for a retirement allowance received in excess of ~~\$3,600~~ \$5,000 or adjusted by an amount determined pursuant to 15-30-111(2)(c)(ii), exempt from any state, county, or municipal tax;

(2) not subject to execution, garnishment, attachment, or other process;

(3) not covered or assessable by an insurance guaranty association; and

(4) unassignable except as specifically provided in the contracts."

**NEW SECTION.** **Section 8. Effective date -- retroactive applicability.** (1) [This act] is effective on passage and approval.

(2) [This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2008.

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